

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0484 CS
Controlled Substance Excise Tax
For The Tax Periods: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on April 30, 1993. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) jeopardy assessment and demand on May 2, 1993. This assessment was discussed with taxpayer on May 4, 1993. Taxpayer filed a protest of the CSET assessment via counsel on June 16, 1993. Taxpayer entered a guilty plea in the Grant Circuit Court on February 14, 1994. The court accepted the guilty plea and entered a judgment finding the taxpayer guilty of dealing in marijuana on April 20, 1994. The court granted an order reducing sentence on December 20, 1996.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

In Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995), the Court held that a controlled substance excise tax assessment was a punishment for purposes of double jeopardy analysis. The Court further stated that the jeopardy attaches when the Department serves the taxpayer with its Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand. In determining which jeopardy is barred as the second jeopardy the relevant dates must be considered.

Taxpayer was presented with the Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand on May 4, 1993. Pursuant to records provided by the taxpayer, a guilty plea was accepted and judgment entered on April 20, 1994. Taxpayer also presented a certified copy of an order reducing sentence for taxpayer entered on December 20, 1996. The Department finds, in accordance with the law as stated in Cliff, that the tax assessment and jeopardy came first in time and were not barred by the principles of double jeopardy. In this case, the Department's assessment came before the taxpayer's plea agreement.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest to penalty is denied.